



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 17

RIN 2900-AP94

Fertility Counseling and Treatment for Certain Veterans and Spouses, Correction

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule; correcting amendment.

SUMMARY: The Department of Veterans Affairs published in the Federal Register on January 19, 2017, an interim final rulemaking adding a new section authorizing in vitro fertilization (IVF) for a veteran with a service-connected disability that results in the inability of the veteran to procreate without the use of fertility treatment. In addition, we added a new section authorizing VA to provide fertility counseling and treatment using assisted reproductive technologies (ART), including IVF, to a spouse of a veteran with a service-connected disability that results in the inability of the veteran to procreate without the use of fertility treatment. These sections contain an error regarding the expiration date VA's authority to provide health care services. This document corrects the errors and does not make any substantive change to the content of the interim final rule.

DATES: Effective: [Insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Patricia M. Hayes, Ph.D. Chief Consultant, Women's Health Services, Patient Care Services, Veterans Health

Administration, Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420. (202) 461-0373. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: VA published an interim final rule at 82 FR 6275 (January 19, 2017) that implemented section 260 of the Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2017, and Zika Response and Preparedness Act (Public Law 114-223) as it pertains to fertility counseling and treatment for certain veterans and spouses. This law states that VA may use appropriated funds available to VA for the Medical Services account to provide fertility counseling and treatment using assisted reproductive technology (ART) to a veteran with a service-connected disability that results in the inability of the veteran to procreate without the use of fertility treatment, and to the spouse of such veteran. The ART treatments referred to in this law are those relating to reproductive assistance provided to a member of the Armed Forces who incurs a serious injury or illness on active duty pursuant to title 10 of the United States Code (U.S.C.) section 1074(c)(4)(A), as described in a policy memorandum issued by the Assistant Secretary of Defense for Health Affairs on April 3, 2012, titled “Policy for Assisted Reproductive Services for the Benefit of Seriously or Severely Ill/Injured (Category II or III) Active Duty Service Members,” and the guidance issued to implement such policy, including any limitations on the amount of benefits available to each eligible member.

VA added new § 17.380 which states that IVF may be provided when clinically appropriate to a veteran who has a service-connected disability that results in the inability of the veteran to procreate without the use of fertility treatment, as well as a

spouse of such veteran. IVF services available to such veterans are the same as those provided by DoD to a member of the Armed Forces who incurs a serious injury or illness on active duty pursuant to 10 U.S.C. 1074(c)(4)(A), as described in DoD policy guidance, including any limitations on the amount of such benefits available to such a member. Fertility counseling and treatment other than IVF is available to veterans as part of the medical benefits package at § 17.38.

We also added new § 17.412 which states that VA may provide fertility counseling and treatment using ART to a spouse of a veteran with a service-connected disability that results in the inability of the veteran to procreate without the use of fertility treatment to the extent such services are available to enrolled veterans under the medical benefits package. It also states that VA may provide IVF to a spouse of a veteran with a service-connected disability that results in the inability of the veteran to procreate without the use of fertility treatment. Such health care services may be provided when clinically appropriate and consistent with the benefits relating to reproductive assistance provided to a member of the Armed Forces who incurs a serious injury or illness on active duty as described in DoD policy guidance.

In paragraph (b) of both §§ 17.380 and 17.412 we incorrectly stated that authority to provide health care services under these sections expires on September 30, 2017, the end of fiscal year 2017. In this correction, we amend both paragraphs to reflect that authority to provide health care services under these sections expires on September 30, 2018.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on February 15, 2017, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and Dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Dated: February 15, 2017.

Janet Coleman,
Chief,
Office of Regulation Policy & Management,
Office of the Secretary,
Department of Veterans Affairs.

For the reasons set out in the preamble, VA is correcting 38 CFR part 17 by making the following correcting amendments:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

AUTHORITY: 38 U.S.C. 501, and as noted in specific sections.

Section 17.38 is also issued under 38 U.S.C. 101, 501, 1701, 1705, 1710, 1710A, 1721, 1722, 1782, and 1786.

Sections 17.380 and 17.412 are also issued under sec. 260, Pub. L. 114–223, 130 Stat. 857.

Section 17.415 is also issued under 38 U.S.C. 7301, 7304, 7402, and 7403.

Sections 17.640 and 17.647 are also issued under sec. 4, Pub. L. 114–2, 129 Stat. 30.

Sections 17.641 through 17.646 are also issued under 38 U.S.C. 501(a) and sec. 4, Pub. L. 114–2, 129 Stat. 30.

§ 17.380 [Amended]

2. In § 17.380 paragraph (b), remove “2017” and add in its place “2018”.

§ 17.412 [Amended]

3. In § 17.412 paragraph (b), remove “2017” and add in its place “2018”.